IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10530 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJOOR HUSSAIN GULAMRASOOL CHAUHAN

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 10530 of 2001

MR JASWANT K SHAH for Petitioner No. 1

MR ASHISH M DAGLI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/12/2001

ORAL JUDGEMENT

Heard Mr.J.K.Shah, learned advocate appearing on behalf of the petitioner and Mr.Y.V.Waghela, learned advocate for Mr.Dagli, appearing on behalf of respondents.

Rule. Mr.Waghela, learned advocate waives service of Rule on behalf of the respondents.

The brief facts giving rise to the present petition are as under :-

The father of the petitioner was working as Conductor with respondent Corporation who expired while on duty on 2-2-1998 at Gandhinagar. According to petitioner, the petitioner being elder son applied for compassionate appointment in prescribed form on 28-2-1998. The application of the petitioner for compassionate appointment was rejected by the respondent Corporation only on the ground that the petitioner's family income including the family pension amount is exceeding Rs.2500/- p.m.. However, the petitioner has applied again on 21-4-1999 and 1-6-1999 for being appointed on compassionate ground and also sent reminders thereon to the respondent Corporation. According to the petitioner, the respondent Corporation has issued administrative order / Circular on date 2-12-1999 relaxing the condition to the effect that while counting the monthly family income available to the family of the deceased income available to the children by way of pension cannot be included in family income. The petitioner made applications on 21-4-1999 and 1-6-1999 are not replied by the respondent and therefore, the petitioner has approached Akhil Gujarat General Mazdoor Sangh. The Union also issued demand notice for compassionate appointment on 16-8-2000. However, the demand notice for compassionate appointment has been rejected by the respondent on 9-10-2000 on the ground that the total income of family of the petitioner is more than Rs.2500/-. According to the petitioner, the respondent Corporation while rejecting the applications and demand notice made on behalf of the petitioner, has ignored the administrative order / circular issued by the respondent and the income of the family of the petitioner has not been taken into consideration as per Circular of the respondent Corporation. It is also case of the petitioner that after second rejection by order dated 9th October, 2000, the petitioner has approached the respondent Corporation again but thereafter also, as such no response has been given by the respondent and therefore the petitioner is constrained to file present petition.

Learned advocate Mr.J.K.Shah appearing on behalf of the petitioner has submitted that the respondent Corporation has calculated the income of Rs.1750/towards

pension received by the widow + Rs.438/- + Rs.438/- received by the petitioner and younger brother of the petitioners respectively the petitioner and thus, calculated the total income of Rs.2626/- which exceeds prescribed limit of Rs.2500/- . Therefore, according to Mr.Shah, learned advocate the respondent Corporation has wrongly calculated the total income of the family of the petitioner which itself is in violation of the Circular / Admn. order issued by the respondent Corporation. It is further submitted that while considering the application for compassionate appointment, the amount of family pension which is received by the widow and the children cannot be included and the same is required to be excluded from the total income of the family but in the instant case, the respondent Corporation has taken into consideration the family pension received by the widow as well as the children - Manjoor Hussain and therefore the calculation of income arrived at by the respondent, itself is in violation of the administrative Circular of the respondent Corporation. However, learned advocate Mr.Shah has relied decisions of this Court rendered in in case of DILIPSINH B. RATHOD VS. STATE OF GUJARAT in Special Civil Application No.11020 / 1993 and order dated 19-6-2001 passed by this Court in Special Civil Application No.12409 / 2000.

Considering the submissions of the learned advocate Mr.Shah and considering the proposition laid down by this Court in the decisions referred to above, Mr.Waghela appearing on behalf of the respondent has submitted that the respondent Corporation will reconsider the case of the petitioner in light of observations made by this Court in aforesaid decisions and will accordingly pass appropriate orders after excluding the income of family pension received by the widow and two children.

Having regards to the submissions of the learned advocates for the parties and considering the facts and material on record of this case, the order dated 21-4-1999 and 9-10-2000 passed by the Divisional Controller of the Respondent Corporation rejecting the request of the petitioner for being appointed on compassionate ground, are hereby quashed and set aside. Therefore, it is directed to the respondent Corporation to reconsider the case of the petitioner for compassionate appointment while excluding the income of the family pension received by the widow and two children and to pass appropriate orders reconsidering the case of the petitioner in light of administrative Circular and policy of the respondent Corporation and observations made by this Court in above referred cases, within period

of two months from the date receiving the copy of this order. Rule is made absolute to the extent indicated herein above with no order as to costs.

Date : 27-12-2001 [H.K.Rathod, J.]

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